



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 05-Jul-07
Time 9:03 AM

Dated: 7/5/2007

TRANSMITTAL No: KFM-TRN-000569

Rev: 00

To: Pedro Sanchez
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: NOPC #06-062007 Referral to DRB

Special Provis. (SP) REF:
Standard Spec. (SS) REF:
RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☒ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	05-Jul-2007	1	KFM-DRB LET-000003 w/attachments	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☐ For Information

Remarks:

CC:

Submitted By:

George Atkinson

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff



July 5, 2007

Serial Letter: KFM-DRB-LTR-000003

Dispute Review Board (DRB)
1122 Ferguson Road
Sebastopol, CA 95472

Attention: Mr. Warren Bullock

Reference: SAS E2/T1 Foundation Project (Caltrans Contract No. 04-0120E4)
KFM Job No. 364/4347

Subject: NOPC #06-062007 -- Referral to Board

Dear Warren,

Please find attached Notice of Potential Claim #06-062007. This NOPC remains in dispute and in accordance with Section 5-1.15 "Disputes Review Board" of the Special Provisions, KFM hereby refers this NOPC to the Disputes Resolution Board. KFM requests a hearing on this matter be scheduled in accordance with Section 5-1.15, "Disputes Review Board."

Please contact this office if you have any comments or questions.

Sincerely,
KIEWIT/FCI/MANSON, a JV

For
Lee Zink
Project Director

Attachments: Transmittal 566 – Initial Notice of Potential Claim #06-062007
State Letter 3235 – Response to Transmittal No. 566
KFM Letter 289 -- Objection to Engineers Response in SL-3235

cc: Mr. Richard Lewis -- DRB Member
Mr. Ronald Maasberg – DRB Member
Mr. Pedro Sanchez -- Resident Engineer
Mr. William Kavicky – Trans Bay Steel, Inc.



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 20-Jun-07
Time 1:51 PM

Dated: 20-Jun-2007

TRANSMITTAL No: KFM-TRN-000566

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: Initial Notice of Potential Claim #06-062007 - TBS' Welder Trainee Issue

Special Provis. (SP) REF:
Standard Spec. (SS) REF: 9-1.04

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items:

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☐ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	20-Jun-2007	0	Initial Notice of Potential Claim #6	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☒ As Requested

☐ For Information

Remarks:

Please find attached KFM's Initial Notice of Potential Claim #6 sent on behalf of our Material Supplier, Trans Bay Steel.

KFM will submit the supplemental Notice of Potential Claim as required by Contract Specification 9-1.04.

CC:

Submitted By:

Meda Schultz

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
INITIAL NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 8/2002)



TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
Pedro J. Sanchez	04-0120E4	6/19/07	06-062007

This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: 6/15/07

The particular nature and circumstances of this potential claim are described as follows:

SEE ATTACHED NO. 1025

(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12685. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Trans Bay Steel Corp.

SUBCONTRACTOR or CONTRACTOR
(Circle One)


(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

Kiewit-ECI-Manson, JV
PRIME CONTRACTOR


(Authorized Representative)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-88, Sacramento, CA 95814.



TRANS BAY STEEL, CORP.

1025 KAISER ROAD, NAPA, CA 94558

TELEPHONE: (707)259-0777 FAX: (707)259-1072

6/19/07

State of California
Department of Transportation

RE: CONTRACT NUMBER: 04-0120E4 E2/T1 SAS Foundations
INITIAL NOTICE OF POTENTIAL CLAIM
Form No. CEM-6201A

"Attachment No. 1025"

Trans Bay Steel has always used a Helper/Trainee with a qualified and approved Submerged Arc Operator to perform welding on Caltrans Projects, i.e., San Mateo Bridge (1999), Carquinez Bridge (2000), Benicia Bridge (2001), Richmond San Rafael Bridge (2002), San Francisco Oakland Bay Bridge (2003), in conformance with our material contracts, Caltrans Special Provisions and the AWS code governing the work in our shop.

During production on the E2/T1 project, commencing on December 06, 2005, the State's subcontractor employed with METS determined that this practice was not in conformance with the special provisions and AWS D1.1-2002. Trans Bay disagrees with METS new position.

METS new position in 2005 created the following impacts: Stopped production by not accepting work which had a Helper/Trainee involved, Loss of production and efficiency, Trainee/Operator standby time, Change in traditional training techniques as allowed in past projects, Additional 100% inspections on components, Delays in delivery Schedules, work stoppages, Additional overtime for production and inspection to mitigate delays and administrative clearing documents.

The State's refusal to issue or negotiate the requested change order associated with the above described is evidenced in numerous written correspondences and meeting minutes dating to late 2005 and continuing to the present. This refusal to issue an agreeable change order led to a June 15, 2007 meeting to discuss the key issues involved. It was at this meeting that an impasse was reached and as such has resulted in the filing of this Initial Notice of Potential Claim.



July 3, 2007

Serial Letter: KFM-LET-000289

California Department of Transportation
SFOBB – E2T1 Project
333 Burma Road
Oakland, CA 94607

Attention: Pedro Sanchez

Reference: SAS E2/T1 Foundation Project
Caltrans Contract No 04-0120E4
KFM Job No. 364/4347

Subject: NOPC #06-062007 -- Objection to Engineer's Response in SL-3235

Dear Pedro:

Kiewit/FCI/Manson, AJV (KFM) and its supplier Trans Bay Steel (TBS) have received and reviewed the Department's letter SL-3235 regarding Initial Notice of Potential Claim (NOPC) #06-062007. Please review TBS's response in the attached letter dated July 3, 2007. As a result of our review, KFM and TBS hereby object to the Engineer's response with respect to TBS's request for recognition of a contract change to comply with the Department's interpretations regarding TBS's welding operator training program and NOPC #06-062007.

KFM and TBS have fully complied with the contract in their attempts to negotiate a settlement with respect to the welder trainee issue. Furthermore, the Department was actively involved in this issue from the outset and has not been prejudiced by the timing of the NOPC. Therefore, KFM and TBS object to the Engineer's incorrect decision that the Contractor has failed to "conform to specified dispute procedures", failed "to pursue diligently and exhaust the administrative procedures in the contract", and is deemed to have waived the right to pursue claims related to this issue under the terms of the contract, up to and including arbitration.

KFM and TBS have complied with contract requirements and the Department's requests with respect to negotiation of Contract Change Order (CCO) – 039 as follows:

- In accordance with the Department's request in SL-2147, KFM LET-214 dated November 1, 2006 replied with an explanation of why proposed CCO-039 was not acceptable and was being returned un-signed. The Department's letter SL-2147 did not describe the proposed CCO-039 as a "final offer." KFM did not receive a written reply to this letter until receiving SL-2955, dated March 12, 2007.

- The Department's letter SL-2955 confirms statements made at weekly coordination meetings that CCO-039 will not be issued and no further discussion with respect to work performed at TBS is warranted. In response, KFM and TBS explained in KFM LET-258 that issues raised in negotiations leading up to CCO-039 and in KFM LET-214 had not been addressed by the Department and requested negotiations be continued.
- KFM and TBS filed NOPC #06-062007 on June 20, 2006, five days after meeting with the Department to review the status of welding operator trainee negotiations. KFM and TBS were informed at that meeting that the Department does not recognize any contract changes with respect to changes made by TBS to their training program in response to "Non-Conformance Reports" issued by the Department.

KFM, on TBS's behalf, requests the Department to acknowledge this objection and reconsider the Engineer's decision with respect to the history of negotiation of this issue and recognize the validity of TBS's Notice of Potential Claim. KFM and TBS would welcome continued negotiations towards settlement of this issue.

Sincerely,

KIEWIT/FCI/MANSON, a JV

A handwritten signature in black ink, appearing to read "Lee Zink", with a stylized flourish underneath.

Lee Zink
Project Director

Attachment

cc: file

**TRANS BAY STEEL, CORP.**

1025 KAISER ROAD, NAPA, CA 94558

TELEPHONE: (707)259-0777 FAX: (707)259-1072

July 3, 2007

Kiewit/FCI/Manson A JV
P.O. Box 23223
Oakland, Ca. 94623

Reference: SFOBB Skyway Contract# 04-012024 and E2TI Contract # 04-0120E4

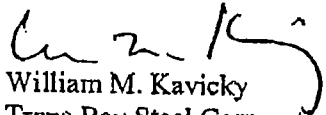
Subject: State Response to NOPC#6

Attn: Dan Proctor,

Trans Bay Steel is in receipt of State Letter 003235 and objects to the Engineer's response that incorrectly determines that there was not timely notice and because of this the potential claim has been waived.

Caltrans was well aware of the welder training issue. This topic was discussed at the bi-weekly meetings. CCO 39 was issued and was to be negotiated with mutually agreed upon language. The negotiations could not be resolved and the State abandoned further discussions.

Due to the Engineer's response in Letter# 3235, we request that you formally object to this decision and refer this matter to DRB.



William M. Kavicky
Trans Bay Steel Corporation

Cc. George Atkinson
Lee Zink
John Hassard